

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 03-987)

Appl. No. : 10/701,235 Confirmation No. 5256
Applicant : Robert A. West
Filed : 11/04/2003
Art Unit : 3693
Examiner : Kenneth Bartley

Mail Stop Patent Ext.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

REQUEST FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT

Sir:

Responsive to the Determination of Patent Term Adjustment mailed in the Issue Notification on July 7, 2010 and appearing on the face of the patent, Patentee submits this Request for Reconsideration. This request is being filed within two months of the issue date, June 27, 2010, of the patent; thus, Patentee contends that this request is timely.

The Determination indicates that U.S. Patent No. 7,765,143 ('143 patent) has been granted 1466 days' worth of Patent Term Adjustment. Patentees submit that the correct Patent Term Adjustment is 1496 days. Patentee, therefore, requests that the '143 patent be granted an additional 30 days of patent term.

Patentee and the Patent Office agree as to the duration of A delay: between the date fourteen months after the filing date of November 4, 2003 and the issuance of the first Office Action (December 11, 2006), 706 days elapsed. Additionally, Patentee and the Patent Office agree that (1) this A delay should be offset by a delay of 208 days between the Response filed on June 17, 2009 and the terminal disclaimer filed on January 11, 2010 and (2) Patentee is also entitled to 918 days of non-overlapping B delay (from the issuance of the first Office Action a month after the three-year anniversary of filing until the Request for Continued Examination filed on June 17, 2009).

But Patentee submits this Request for Reconsideration of Patent Term Adjustment to dispute another period of 61 days by which the Patent Office offset the A. In particular, Patentee requests an additional 30 days be added to the patent term because the Patent Office subtracted too many days for the filing of the Amendment after a Notice of Allowance. According to 37 C.F.R. §1.704(c)(10), submission of an Amendment under § 1.312 (after a Notice of Allowance) reduces the patent term by the lesser of “(i) The number of days, if any, beginning on the date the amendment under §1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under §1.312 or such other paper; or (ii) Four months.” In this case, the amendment under §1.312 was filed on May 28, 2010 (with the payment of the issue fee) and the response to the amendment under §1.312 was mailed 31 days later, on June 28, 2010. Thus, the patent term should only have been reduced by 31 days, not 61 days as calculated by the Patent Office.

Patentees respectfully request reconsideration of the patent term adjustment and reinstatement of the 30 days. If this Request for Reconsideration of Patent Term Adjustment is granted, the patent term adjustment would be 1496 days. If a telephone

conference would expedite the consideration of this request, please call Patentees' undersigned representative at 312-913-3359. The fee of \$200.00 under 37 CFR §1.18(e) associated with this submission has been paid during the electronic filing process. The Commissioner is hereby authorized to charge any underpayment or credit any overpayment to Deposit Account No. 13-2490.

Respectfully submitted,

McDonnell Boehnen Hulbert & Berghoff LLP

Date: July 28, 2010

By: Jessica L. Lunney/

Jessica L. Lunney

Registration No. 62,125

McDonnell Boehnen
Hulbert & Berghoff LLP
300 South Wacker Drive
Chicago, IL 60606
Telephone: 312-913-0001